



May 29, 2015

Dr. Samuel Bueno, Superintendent of Schools  
San Diego ISD  
609 Labbe Street  
San Diego, TX 78384

Re: New Junior High School  
San Diego ISD

Dear Dr. Bueno,

At the last School Board Meeting on May 20, 2015, I made presentation of the status of construction of the New Junior High School. During my presentation I reported that various phases of the project were up to two months behind due to lack of manpower and or materials on the project. On May 19, 2015 Julio Sepulveda with Texas Descon at the on-site project meeting, presented a Recovery Schedule with Final Completion projected to August 28, 2015. On May 20, 2015 Doug Smith with Texas Descon presented the same date at the School Board meeting. This date is best case scenario, without any additional weather delays. Presently the project has had 41 rain days.

As project architect I have great concern on Texas Descon making the Recovery Schedule completion date. I do not believe this very ambitious schedule can be met. It pretty much means that in 'value', one half the project will have to be done in the next 3 months. I know that you and I have discussed our concerns of the quality of this project as Texas Descon proceeds. Therefore I reinforce your Plan B as far as timing on this project. Be prepared to extend your students time in present facilities.

As of this week, on-site indication of progress has been made through manpower and materials. The greatest factor in drying in the project starts next week Monday with the roofers. We will continue to support the progress while making our best effort to reinforce quality.

Sincerely,

Albert R. Soto, AIA, Partner  
LWA Architects

Copy to:  
Doug Smith - Texas Descon, Julio Sepulveda – Texas Descon



**SAN DIEGO INDEPENDENT SCHOOL DISTRICT  
NEW JUNIOR HIGH SCHOOL – MAY 20, 2015**



# ITEM 1

## NEW JUNIOR HIGH SCHOOL

1. The last job-site meeting was held on 5-18-15.  
The next meeting will be next Tuesday, 5-26-15.
2. Concrete block progress has stopped in last 2 months.
3. Work in parking lot subgrade has not started.
4. Installation of Aluminum Storefront window frames has stopped in last 2 months.
5. Metal decking progress has stopped in last 2 months.



## ITEM 2

### NEW JUNIOR HIGH SCHOOL

6. Water proofing stopped on exterior concrete block walls in last month.
7. Electrical and plumbing stopped last week.
8. Workers have been scarce last 2 months doing odds and ends cleaning after the rains.
9. The last Pay Request No. 010 for \$518,838.26 was submitted 5-1-2015. I have not approved or certified payment. There is currently a balance of \$6,125,133.26 left in the project. The school district has paid out \$5,126,129.91 to the General Contractor. The contract sum to date is \$11,051,263.17
10. The project has had 42 rain days. The General Contractor has submitted a Recovery Schedule to be complete by 8-25-2015.





# ITEM 3

## NEW JUNIOR HIGH SCHOOL

Additional photos





**SAN DIEGO INDEPENDENT SCHOOL DISTRICT  
NEW JUNIOR HIGH SCHOOL – SEPTEMBER 30, 2015**



711 N, CARANCAHUA, STE. 404  
CORPUS CHRISTI, TEXAS 78401



# ITEM 1

## NEW JUNIOR HIGH SCHOOL

1. The last job-site meeting was held on 9-29-15. The next meeting will be next Tuesday, 10-6-15.
2. Concrete block is nearly complete in the cafeteria and weight room near the gymnasium. Concrete block wrapping of steel columns is progressing. The electrical and plumbing subcontractors are completing their rough-in along with the concrete block installation. Interior block walls that have been finished are being block filled and first coat painted .
3. Work on the front parking lot subgrade continues. The pump station manhole was backfilled last week at the northeast corner.
4. The overhead roll down screens between the kitchen and cafeteria have been installed.
5. The vertical transitions to dry in the building are being installed. The new dampproofing scheme to replace the old dampproofing installed will be submitted by the end of this week.



## ITEM 2

### NEW JUNIOR HIGH SCHOOL

6. The damproofing on exterior walls will be redone and finished before the exterior masonry is set.
7. Pay Request No. 013 was submitted on 9-1-2015. It was certified and forwarded to the Bonding Company on 9-11-2015 for \$536,388.82. Pay Request No. 014 was submitted 9-29-2015. I have not yet certified the current payment request of \$360,218.07. When it is approved, it will reflect a 74% completion of the project. The balance to finish the project including retainage is \$3,285,439.81
8. The project has had 43 rain days.
9. The General Contractor submitted a revised Recovery Schedule for completion on 9-22-15. A projected date of April 21, 2015 Substantial Completion was submitted. We have asked the contractor to refine and re-submit.





## ITEM 3

### NEW JUNIOR HIGH SCHOOL

Additional photos:

10. Mechanical ducting in Administration area.
11. Concrete block with filler in the Gym. 1<sup>st</sup> coat of paint as well.



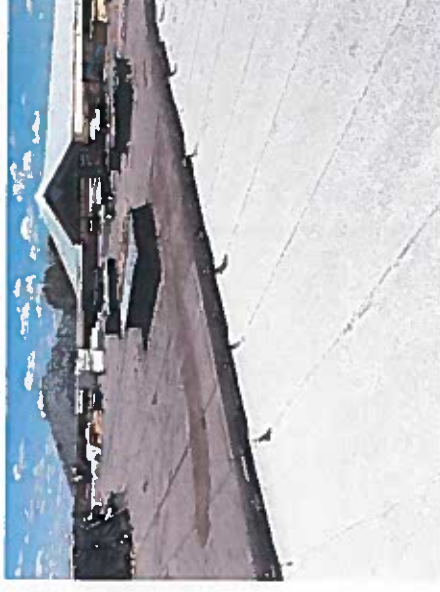
12. Roof-top HVAC units have been delivered.
13. Northeast corner of the Library

Additional photos:

14. Final cap sheet of roofing in place over area A.



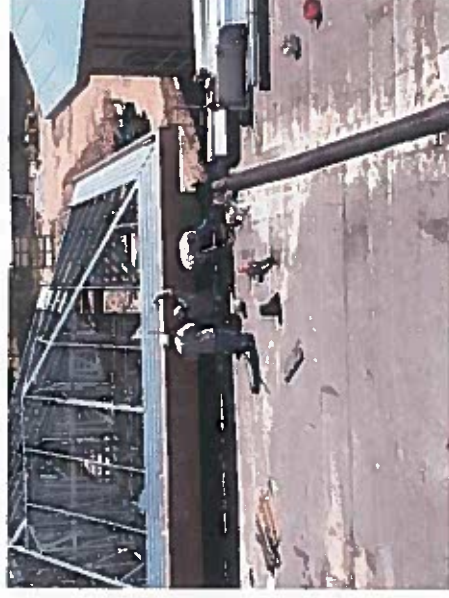
15. Roofing transition at an expansion joint between areas A & B.



16. Flashing between low Roof area B to the high Band Hall wall.



17. Same location.





**SAN DIEGO INDEPENDENT SCHOOL DISTRICT  
NEW JUNIOR HIGH SCHOOL - FEBRUARY 24, 2016**



711 N. CARANCAHUA, STE. 404  
CORPUS CHRISTI, TEXAS 78401



### Work completed:

1. Masonry arches are being set in the main entry corridor. The ceiling furr-down surround is in place. 2x2 ceiling tile and 2x4 fluorescent light fixtures will be laid in the high ceilings. The sheet rock furr-downs are being painted. VCT flooring will be completed in the main entry corridor after most all else is finished.
2. Ceilings, VCT flooring, wall painting, cabinets, markerboards, tackboards and loose furniture is in place in the classrooms in wings A & B. Doors are locked to lessen foot traffic into classrooms.
3. Trophy cases are in place in the main entry corridor and the main corridor to the cafeteria.



Additional photos:

4. The floating of the drywall furr-downs in the cafeteria continues. Further progress includes painting of walls and Furr-downs. HVAC exposed ducting has been installed. Rolling gates at the serving Lines are operational. Strip Lighting and VCT flooring will be coordinated as lastly finished items in the cafetorium. The stage will have a motorized projection screen, track lighting and side drawn stage curtains.



Additional photos:



5. Painting of drywall and concrete block is underway in the administrative area.

6. Cabinet work, ceilings, and lighting continues in the reception area off the main entrance.



7. Work in the band hall progresses. Marker boards, tack boards, tack strips, furr-downs, 2x2 acoustical tile and 4x4 pyramid diffuser are being installed.



Additional Comments:

8. Good progress is being made.
9. Pay Request No. 18 was certified for payment on 2-5-2016 for \$316,919.57 There remains \$1,929,279.92 in the contract. That reflects an 87% completion of the project.
10. In the last 4 weeks, head count averages have been 58, 42, 56 and 55 per week. The General Contractor has been completing finish items in all areas A, B and C. Project is still in line to be Substantially Complete 4-20-16.





**SAN DIEGO INDEPENDENT SCHOOL DISTRICT  
NEW JUNIOR HIGH SCHOOL - APRIL 28, 2016**



711 N, CARANCAHUA, STE. 404  
CORPUS CHRISTI, TEXAS 78401

### Work completed:

1. Exterior masonry at front of school is nearly complete. Front canopy at bus drop-off and parent-drop of starts on Monday coming.
2. Exterior grading continues around campus at building perimeters. The exterior walls are being power washed to clean brick and block veneers of dirt and grout. The tall foundation beams will be hand rubbed for a finer smoother finish.
3. Concrete curb and gutter at parking lots and driveways is nearly complete and nearly ready for base and paving.
4. Sidewalks and site work has been initiated for upcoming landscaping.





Work recently done:

5. The VCT flooring was uncovered in Area A.
6. Gym logos have been laid out and ready for final clear sealant.
7. Acoustical baffles in the gym have been hung.
8. Gyp. Bd. Ceilings have been installed in Boys and Girls locker rooms.
9. Light fixtures and flooring in weight room underway.
10. Case work and final painting in the library.
11. Light work in trophy cases.
12. Trench drains in the kitchen.



Additional photos:

13. Kitchen equipment has started to be installed.

14. Floor paint sealant has been installed in the kitchen.

15. Lighting in the cafeteria and stage is in place.

Computer data connections are in order in the kitchen, kitchen offices, serving line counter locations, side wall for projector control and stage rear wall for amplifier control.



Additional Comments:

17. Pay Request No. 21 was submitted today . I have not certified or approved for payment, the payment request is for \$147,542.67. When certified for payment it will reflect a 96% completion of the project and there remains \$945,055.81 in the balance including retainage.



18. In the last 3 weeks, head count averages have been 42, 40, and 57 per week. The General Contractor has been completing finish items in all areas A, B and C. At last school board meeting the Substantial Completion was reported for 4-20-16. This morning the construction project manager had indicated 6-17-16 as the SC with final completion on 6-30-16. There remains 5 glass and metal frame walls to be fire protected that requires fabrication. They are access control walls.







August 11, 2015

Dr. Samuel Bueno  
San Diego ISD  
623 Hwy. 359  
San Diego, TX 78384

Albert Soto, AIA  
LaMarr Wormack & Associates, L.P.  
American Bank Plaza  
Corpus Christi, TX 78475

RE: Principal: Texas Descon, L.P.  
File No.: S14030242-01  
Bond No.: SS70111644  
Project: New Bernarda Jaime Jr. High School  
Obligee: San Diego Independent School District

Dr. Bueno and Mr. Soto:

As you know, The Guarantee Company of North America USA ("The Guarantee") is Surety for the referenced Principal in connection with the above-referenced project.

Texas Descon, L.P. executed a General Agreement of Indemnity ("GAI") in favor of The Guarantee on June 6, 2014. In the event of a default of the GAI, Texas Descon, L.P. irrevocably appointed any officer of The Guarantee as its Attorney-In-Fact with full rights and authority to dispose of the performance of any contract.

Based on its failure to pay subcontractors and suppliers on the referenced project and other issues, The Guarantee declared Texas Descon, L.P. to be in default of the GAI. The Guarantee is now utilizing its ~~Attorney-In-Fact~~ rights under the GAI to notify the San Diego Independent School District that Texas Descon, L.P. is voluntarily terminating the referenced project.

The Guarantee will be contacting you immediately to discuss completion of the project through its performance bond.

This correspondence and all prior or subsequent communications are made with express reservation of all rights and defenses that may be available to Guarantee Company of North America USA. at law or in equity, under the terms and provisions of the bond and contract documents.

Should you have any questions, please feel free to call me at (248) 281-0281 x66024 or jjubera@gcna.com.

Sincerely,

Guarantee Company of North American USA

Jeffrey S. Jubera  
Vice President – Claims & General Counsel

cc: Doug Smith, Texas Descon, L.P. (doug@texasdescon.com)  
Doug Poneck, Esq. (dponeck@escamillaponeck.com)  
Greg Weinstein, Esq. (gweinstein@weinrad.com)

Excellence, Expertise, Experience ... Every time

The Guarantee Company of North America USA  
One Towne Square, Suite 1470  
Southfield, Michigan 48076  
Tel 248-281-0281 • Fax 248-750-0451 • 1-866-528-0567  
gcna.com

## **AGREEMENT**

This Agreement (the "Agreement") is made and entered into this 18th day of August, 2015, by and between The Guarantee Company of North America USA (the "Surety") and the San Diego Independent School District (the "District").

### **RECITALS:**

WHEREAS, Texas Descon, L.P. ("Texas Descon") and the District entered into a Contract dated May 19, 2014 (the "Contract") in connection with the San Diego ISD New Bernarda Jaime Jr. High School Project (the "Project");

WHEREAS, as required by the terms of the Contract, Texas Descon and the Surety made, executed and delivered to the District Performance Bond No. SS70111644 and Payment Bond No. SS70111644 (collectively, the "Bonds"), both in the penal sum of \$12,183,000.00;

WHEREAS, Surety, on behalf of Texas Descon, issued a letter received by the District on \_\_\_\_\_ August 11, 2015, notifying the District that it was voluntarily terminating its right to continue work on the Project; and

WHEREAS, the District has requested the involvement of the Surety under the Performance Bond to complete the remaining scope of work under the Contract.

NOW, THEREFORE, based on the exchange of valuable consideration, the receipt and sufficiency of which is acknowledged, and based on the Recitals set forth above which form a part of this Agreement, the Surety and the District agree to the following terms and conditions:

### **AGREEMENTS:**

1. The Surety agrees to undertake the completion of the scope of work under the Contract, including all modifications thereto, and agrees to be bound by the Contract. The District acknowledges that the Surety, by its execution of this Agreement, is acting in its capacity as the surety for Texas Descon in making arrangements for the performance and completion of the Contract, and not as a completing contractor, and that the Surety is not assuming any obligations or liabilities beyond those set forth in the Bonds. As to the completion of the Contract, except as otherwise provided in this Agreement, the Surety is entitled to all rights, title and interest of Texas Descon in and to the Contract in all respects as if the Surety were the original party to the Contract. The Surety is not to be considered a contractor, however, for any other purpose. Nothing herein, however, limits the rights, claims, or remedies available to the District that may arise under the Contract or applicable law.

2. The District acknowledges that the Surety will subcontract the performance of the remaining work under the Contract to a completion contractor (the "Completion Contractor"). The Completion Contractor selected by the Surety shall be subject to the written consent of the District. The Surety may satisfy the insurance obligations required under the Contract by providing evidence of the insurance coverage required by the Contract to be carried by the Completion Contractor, with the Surety and the District being named as additional insureds under the policy or policies. The Surety reserves the right to terminate its contract with the Completion Contractor at any time, subject to seven (7) business days' prior written notice to the District, and to contract with another completion contractor, with such selection of another completion contractor also subject to the written consent of the District.

3. The District and the Surety agree that as of the date of this Agreement:
- (a) The authorized amount of the Contract, including all approved change orders, through **Pay Application No. 11** submitted on **May 31, 2015**, is the sum of **\$11,051,263.17**;
  - (b) Texas Descon has been paid through **Pay Application No. 11** the sum of **\$6,546,231.93**;
  - (c) The District is holding the sum of **\$327,311.60** as retainage pursuant to the terms of the Contract through **Pay Application No. 11**;
  - (d) The "Contract Balance" shall be hereinafter defined as the sum of **\$4,832,342.84** (which represents the value of the balance of the work to be completed of **\$4,505,031.24** and retainage of **\$327,311.60**). The Contract Balance shall be increased or decreased, as appropriate, as a result of certain pending change orders to the Contract submitted by Texas Descon and/or the District, and as a result of any change orders for extra work (work that is different from, in excess of, or beyond the scope of the work required by the Contract) requested or required by the District after the date of the execution of this Agreement;
  - (e) As of the date of the execution of this Agreement, the District represents and warrants that, according to the records available to it, the Contract Balance as defined herein is accurate. The Surety reserves the right to verify the accuracy of the Contract Balance. The Surety's remedy against the District for breach of this representation and warranty is reformation of the Contract Balance to the proper amount; and
  - (f) In addition to the "Contract Balance" and apart from any limitations in this Agreement, the parties agree that the District has incurred, and will continue to incur, as of July 1, 2015, additional costs of **\$2,785.00** per month for the maintenance of facilities to accommodate staff and/or students as a result of delays due to Texas Descon unrelated to contractually permitted delays. Furthermore, the Surety agrees to reimburse the District for this additional cost until the completion of the project, and the Surety hereby authorizes the District to deduct such amounts from amounts to be paid to the Surety and the Completion Contractor without need of additional authorization from the Surety or any other party.

4. The remaining Contract Balance is dedicated to and will be applied to the completion of the Contract pursuant to this Agreement. The remaining payment of any additional Contract Balance to the Surety shall be made in accordance with the terms of the Contract as to the time, amount and method of payment. The Surety agrees to spend its own funds as may be necessary from time to time to pay for the performance of the Contract by the Completion Contractor in the event that the Contract Balance is insufficient, with any such payments being credited against the penal sum of the Performance Bond.

5. The Surety shall complete the work required under the Contract pursuant to this Agreement on or before a mutually acceptable completion date in 2016 (the "**Completion Date**"), such date to be proposed by the Surety to the District by September 10, 2015. If the work is not completed by the Completion Date, subject to any extensions pursuant to the Contract, then the District may assess liquidated damages in the amount provided by the Contract. In any event, the Surety agrees that it will have all of the Project's classrooms available for use by December 20, 2015.



6. To the extent the District has any right, title or interest therein, the District agrees that the Surety and its Completion Contractor shall have the right to use, without charge, any of the equipment, materials and appurtenances furnished or supplied by Texas Descon which may be stored on or about the premises of the Project site or materials which may have been fabricated for use in connection with the Contract, whether or not presently on the Project site.

7. The Surety shall be represented at the Project by the Completion Contractor with the Completion Contractor having no authority to bind the Surety to any additional work or changes to the Contract, unless expressly provided in this Agreement. The Surety designates the Completion Contractor to prepare and process pay requisitions on the Contract. However, the Surety will sign all pay requisitions submitted to the District. Payments from the District shall be made payable to the Surety and transmitted to the Surety at the following address, unless and until the District is notified in writing of any different address:

**Matson Driscoll Account  
Matson Driscoll & Damico LLP  
ATTN: David Stryjewski, CPA  
399 Market Street, Suite 300  
Philadelphia, PA 19106**

The Completion Contractor shall have, on behalf of the Surety, the authority to negotiate and sign change orders for extra work (work that is different from, in excess of, or beyond the scope of the work required by the Contract) requested or required by the District (hereinafter "Change Order") without the Surety's prior written approval, provided the Change Order does not exceed \$5,000 and the Completion Contractor is given additional time to perform the Change Order. If no additional time is given to the Completion Contractor to perform the Change Order, then the Surety's prior written approval is required to negotiate the Change Order and the final Change Order must be signed by the Surety. The prior written approval of the Surety shall be required on all other Change Orders. The Completion Contractor has no authority to negotiate deductive Change Orders, credits, back charges or net deductions from the Contract or the Contract Balance of any nature whatsoever without the Surety's prior written approval. Any agreements with respect to the warranty work of Texas Descon or corrective work as a result of latent defect in the work performed by Texas Descon shall require the written approval of the Surety.

8. The total liability of the Surety under this Agreement and the Performance Bond for the performance of the work, after the expenditure of the Contract Balance, is limited to and shall not exceed the penal sum of the Performance Bond in the amount of \$12,183,000.00. All payments properly made by the Surety for the performance of the Contract shall be credited against the penal sum of the Performance Bond. Nothing in this Agreement constitutes a waiver of such penal sum or an increase in the liability of the Surety under the Performance Bond.

9. The District may only withhold any of the Contract Balance from the Surety pursuant to its rights under the Contract and applicable law. The Payment Bond shall remain in full force and effect. The total liability of the Surety under the Payment Bond is limited to and shall not exceed the penal sum of the Payment Bond in the amount of \$12,183,000.00. All Payment Bond payments properly made by the Surety shall be credited against the penal sum of the Payment Bond. Nothing in this Agreement constitutes a waiver of such penal sum or an increase in the liability of the Surety under the Payment Bond.

10. The District agrees that the scope of the work of Texas Descon for the Project is confined to terms of the Contract.

11. The Surety agrees to indemnify, defend, and hold harmless the District from any competing claims by third parties to the Contract funds.

12. The District agrees to provide the Surety and the Completion Contractor with reasonable access and/or copies of documents submitted by Texas Descon (or its subcontractors or vendors) to the District in connection with the Project or the Contract, including correspondence, contract documents, plans, specifications, and submittals.

13. This Agreement is solely for the benefit of the District and the Surety. The District and the Surety do not intend by any provision of this Agreement to create any rights in or increase the rights of any third-party beneficiaries, nor to confer any benefit upon or enforceable rights under this Agreement or otherwise upon anyone other than the District and the Surety. Specifically, the District and the Surety acknowledge that nothing in this Agreement shall extend or increase the rights of any third-party claimants or the liabilities or obligations of the Surety under the Bonds.

14. This Agreement constitutes the whole of the understanding, discussions, and agreements by and between the District and the Surety. The terms and provisions of this Agreement are contractual and not mere recitals. The District and the Surety acknowledge that there have been no oral, written or other agreements of any kind as a condition precedent to or to induce the execution and delivery of this Agreement. Any written or oral discussions conducted prior to the effective date of this Agreement shall not in any way vary or alter the terms of this Agreement.

15. This Agreement shall not be changed, amended or altered in any way except in writing and executed by both the District and the Surety.

16. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original.

17. This Agreement shall be governed by and controlled by the laws of the State of Texas.

18. Any notices which are required to be given by the terms of this Agreement or the Bonds shall be made as follows:

As to the District:

Via certified mail, return receipt required, postage prepaid to:

Dr. Samuel Bueno, Superintendent  
San Diego Independent School District  
609 Labbe Ave.  
San Diego, Texas 78384

With a copy to:

Douglas A. Poneck  
Escamilla & Poneck, LLP  
700 N. St. Mary's, Suite 850  
San Antonio, Texas 78205

As to the Surety:

Via certified mail, return receipt required, postage prepaid to:

Jeffrey S. Jubera  
Guarantee Co. of N. America USA  
One Towne Square, Ste. 1470  
Southfield, MI 48076

19. This Agreement is effective as of the date first written above.
20. This Agreement shall be binding upon the parties and their respective successors and assigns.
21. In the event that one or more provisions of this Agreement shall be declared to be invalid, illegal or unenforceable in any respect, unless such invalidity, illegality or unenforceability shall be tantamount to a failure of consideration, the validity, legality and enforceability of the remaining provisions contained in this Agreement shall not in any way be affected or impaired thereby.
22. All representations and warranties made in this Agreement shall survive the execution and delivery of this Agreement and the consummation of the transaction contemplated thereby.
23. The Surety and the District mutually reserve all rights, claims, causes of actions, demands and defenses, known or unknown, now existing or accruing after the execution of this Agreement that they have or may have against each other. It is not the intention of the Surety in entering into this *Takeover* Agreement to waive, prejudice, amend, alter, revise, release or in any way adversely affect any claim, cause of action or defense, known or unknown, that it, as Surety, or Texas Descon, might have against the District or any other person, party, or entity. Similarly, it is not the intention of the District in entering into this *Takeover* Agreement to waive, prejudice, amend, alter, revise, release or in any way adversely affect any claim, cause of action or defense, known or unknown, that the District might have against the Texas Descon or any other person, party, or entity. Furthermore, the District explicitly reserves all of the rights available to it under the Contract.
24. All claims, rights, causes of action of or against Texas Descon arising prior to the execution of this Agreement are preserved. The Surety shall have the right to pursue these claims in its own name or in the name of Texas Descon. Similarly, the District shall have the right to



pursue any claims that may exist or arise under the Contract. The parties do not intend for this Agreement to be a settlement of claims or an accord and satisfaction.

25. In addition to the contract documents previously referenced in this Agreement, the parties incorporate herein by reference the following documents:

- a. Most Recent Payment Application of Texas Descon;
- b. Most Recent Unpaid Payment Application of Texas Descon;
- c. The Contract;
- d. The Bonds;
- e. All Change Orders and Time Extension Requests;
- f. All Notices of Defective Work;
- g. All Claims of Notices on the Project from Subcontracts or Vendors; and
- h. A listing of all payments made by the District to Texas Descon, showing the payment date, the amount paid, the check number, and the payee.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date indicated above, and each of the undersigned personally represent and warrant that they have the full right, power and authority to execute this Agreement on behalf of the respective parties.

DISTRICT

By: 

Name: Dr. Samuel Bueno

Title: Superintendent, San Diego I.S.D.

SURETY

By: 

Name: Jeffrey Jubera

Title: V.P. Claims